IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

MFA.No. 774 of 2000(D)

OPMV.703/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT/PETITIONER:

MOLLY DEVASSIA, PLATHOTTATHIL VEEDU,
CHIRAKKADAVU EAST P.O., KOTTAYAM.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

RESPONDENTS/RESPONDENTS:
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1. GEORGE MATHEW, CHITTAPPANATTU HOUSE, MUNDAKAYAM P.O., KOTTAYAM.

2. K.T.THOMAS @ KUNJUMON, KOTTARAM HOUSE, NEAR CHAMBAKARA CHURCH, CHAMBAKKARA P.O., KARUKACHAL, KOTTAYAM.

3. THE NEW INDIA ASSURANCE COMPANY LTD., CHANGANACHERRY P.O., KOTTAYAM.

BY ADV. SRI.JOSY ANTONY FOR R1
SRI.M.RAJAGOPALAN FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.774 OF 2000

Dated 11th June, 2007

JUDGMENT

Koshy,J.

An unmarried girl aged 28 sustained serious injuries in a motor accident on 29.9.1995. She claimed a compensation of Rs.3,50,000/=. Total compensation awarded was only Rs.1,39,800/=. Substantial amount granted is regarding reimbursement of medical bills. Ext.A9 is the medical certificate. It has come out in evidence that five operations were conducted and as there were complications open reduction internal fixation as well as bone grafting were done. Ext.A7 certificate shows that there is 30% disability. These facts are accepted by the Tribunal. It was also found by the Tribunal that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent insurance company. Only quantum of compensation is disputed in this appeal.

2. It is submitted that the appellant was unmarried. She was a housemaid and because of the serious injuries which are permanent in nature, her prospects of married life is completely ruined. Further, she is unable to work as a

housemaid due to the disability. According to the appellant she will not get any employment and, therefore, compensation awarded was very inadequate and compensation should be granted for 100% loss of earning capacity. The fact that she was a housemaid is not disputed. In 1994 when the second schedule was framed, annual notional income of a non-earning person was fixed at Rs.15,000/= (Rs.1,250/= per month). Here, the deceased was a housemaid. Considering the above, we are of the opinion that at least notional income of a non-earning person should be fixed. Therefore, annual income will be Rs.15,000/= per year. It is true that she has 30% disability and she may not be able to do the same work. We are unable to grant compensation for more than 30% disability. A three member bench of the Supreme Court in ***Smt.Supe Dei and others*** v. ***M/s.National Insurance Company Ltd. and another*** (JT 2002 (Suppl.1) SC 451), held that the second schedule of the Motor Vehicles Act is framed for the purpose of awarding compensation under Section 163-A, but, it serves as a guideline for determination of compensation under Section 166 of the Motor Vehicles Act. Since the victim of the accident in that case was aged 32, considering the second schedule, Hon'ble Supreme Court accepted 17 as the multiplier. In ***United India Insurance***

Co. Ltd. v. ***Patricia Jean Mahajan and others*** (JT 2002 (5) SC 74), the Apex Court held that, except in very rare cases, multiplier system should not be deviated from. The other methods, which were in vogue prior to the introduction of the multiplier system, were held to be no more good system. It was further held that normally the multiplier, as indicated in the second schedule, should be applied. Though the second schedule is found to be a safe guide for the purpose of calculation of the amount of compensation, in special circumstances, it can be varied. In that case, it was also held that if the multiplicand is very high, a lesser multiplier can be taken. In ***Abati Bezbaruah*** v. ***Dy. Director General, Geological Survey of India and another*** ((2003) 3 SCC 148), it was held that structured formula mentioned in the second schedule gives guidelines for determination of the amount of compensation in terms of Section 166 of the Motor Vehicles Act. Deviation from the structured formula can be resorted to only in exceptional cases and ordinarily the above multiplier system should be followed. Taking guidance from the second schedule, we fix 18 as the multiplier. If that be so, compensation payable for 30% disability will be Rs.15,000 x 18 x $\frac{30}{100}$ = 81,000/=. Tribunal has awarded only Rs.65,000/= for disability. Therefore, appellant will be

entitled to an additional amount of Rs.16,000/= on that count. Medical reimbursement was already granted. She is not entitled to any further enhancement under other grounds. The above Rs.16,000/= now granted with 8% interest should be deposited by the third respondent insurance company, over and above the decreed amount by the Tribunal, within three months from the date of receipt of a copy of this judgment. Considering the fact that the accident occurred on 29.9.1995, on deposit of the amount, the appellant is entitled to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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